

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,362

IN THE MATTER OF:

Served May 15, 2008

FON PIUS NDE, Trading as PIUSMED)	Case No. MP-2007-187
WORLD TRANSPORT, Suspension and)	
Investigation of Revocation of)	
Certificate No. 1327)	

This matter is before the Commission on respondent's response to Order No. 11,217, served March 14, 2008, which extended the deadline for respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or revoke Certificate No. 1327, for knowingly and willfully conducting operations under an invalid/suspended certificate of authority and failing to produce documents as directed.

I BACKGROUND

Under the Compact, a WMATC carrier may not engage in transportation subject to the Compact if the carrier's certificate of authority is not "in force."¹ A certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.²

Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 1327 for a minimum of \$1.5 million in combined-single-limit liability coverage and maintain on file with the Commission at all times proof of coverage in the form of a WMATC Certificate of Insurance and Policy Endorsement (WMATC Insurance Endorsement) for each policy comprising the minimum.

Certificate No. 1327 was rendered invalid on September 17, 2007, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 10,762, served September 17, 2007, noted the automatic suspension of Certificate No. 1327 pursuant to Regulation No. 58-02, directed respondent to cease transporting passengers for hire under Certificate No. 1327, and gave respondent thirty days to replace the cancelled endorsement and pay the \$50 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 1327.

Respondent paid the \$50 late fee on October 5 and submitted a \$1.5 million primary WMATC Insurance Endorsement on September 26, 2007, with an effective date of September 25, 2007. Thus, as matters

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

stood on September 26, respondent apparently had been uninsured for an eight-day period from September 17, 2007, through September 24, 2007.

Under Commission Rule No. 28, respondent is required to verify that he has not operated since the suspension period commenced. Order No. 10,842, served October 19, 2007, accordingly gave respondent thirty days to verify cessation of operations as of September 17. Inasmuch as respondent's clients included the District of Columbia Department of Health, Medical Assistance Administration (DC Medicaid), and United Cerebral Palsy of Washington, D.C. and Northern Virginia, Inc. (UCP), such verification was to be supported by confirmation from DC Medicaid and UCP and by copies of respondent's business records.

On February 6, 2008, having received no response from respondent, the Commission issued Order No. 11,139 directing respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or revoke Certificate No. 1327.

On February 26, 2008, respondent filed a statement asserting that he did not operate during the 8-day insurance gap and another statement asserting that he had conducted no operations since October 2007, but neither statement is signed. And neither statement addresses the period from September 25 through the date in October, as yet unspecified, when according to respondent his vehicle developed transmission problems.³

On March 3, 2008, respondent submitted a revised \$1.5 million replacement WMATC Insurance Endorsement. The revised replacement is effective September 17, 2007, thus eliminating the 8-day gap in coverage under the original replacement.⁴

As of March 14, 2008, however, respondent still had produced no corroborating statements from DC Medicaid and no business records, as directed by Order No. 10,842, and no explanation for failing to do so. Yet, because it appeared the orders in this proceeding up to that time - including Order No. 10,842 - had been sent to an out of date address for respondent, Order No. 11,217 extended to April 14 the show cause deadline originally announced in Order No. 11,139. Order No. 11,217 also directed respondent to file a new tariff to replace respondent's out of date DC Medicaid tariff.⁵

II. RESPONSE

Respondent responded to Order No. 11,217 by filing a new tariff to replace the out of date DC Medicaid tariff and an updated WMATC Insurance Endorsement. Respondent has filed nothing else in response to Order No. 11,217. Thus, despite ample opportunity, respondent has

³ A third, signed statement filed March 12, 2008, offers no additional details.

⁴ Coverage under the revised replacement expired January 14, 2008, but has since been replaced by a new endorsement expiring June 6, 2008.

⁵ See *In re Ahmed Medical Transp., Inc.*, No. MP-08-051, Order No. 11,186 (Mar. 3, 2008) (same).

yet to file an acceptable verification of cessation of operations and the corroborating documents required by Order No. 10,842. In addition, respondent has offered no explanation for failing to do so.

III. ASSESSMENT OF FORFEITURE AND REVOCATION OF AUTHORITY

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.⁶

The Commission may suspend or revoke all or part of any certificate of authority for willful failure to comply with a provision of the Compact, an order, rule, or regulation of the Commission, or a term, condition, or limitation of the certificate.⁷

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁸ The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by careless disregard whether or not one has the right so to act.⁹

Because respondent has failed to comply with Order No. 10,842 by filing an acceptable verification and producing the required documents, and because respondent has offered no explanation for this noncompliance, we find that respondent has failed to show cause why the Commission should not assess a civil forfeiture of \$250¹⁰ and revoke Certificate No. 1327.¹¹

IV. WAIVER OF LATE FEES

While this matter was pending, respondent's annual report and annual fee for 2008 became due on January 1, 2008, pursuant to Regulation Nos. 60-01 and 67-02. Respondent filed the report and paid the fee but not by the January 31 deadline. It appears that respondent's failure to timely comply may have been caused by the Commission mailing the blank report and invoice to the wrong address.

⁶ Compact, tit. II, art. XIII, § 6(f).

⁷ Compact, tit. II, art. XI, § 10(c).

⁸ *In re Alem Mesfin, t/a AM Transp.*, No. MP-06-201, Order No. 11,076 (Jan. 14, 2008); *In re Westview Med. & Rehab. Servs., P.C. Inc.*, No. MP-07-070, Order No. 10,882 (Nov. 2, 2007); *In re Special People Transp., LLC*, No. MP-06-103, Order No. 10,683 (Aug. 8, 2007).

⁹ Order No. 11,076; Order No. 10,882; Order No. 10,683.

¹⁰ See Order No. 11,076 (assessing \$250 for failing to produce DC Medicaid statement); Order No. 10,882 (assessing \$250 for failing to comply with document production requirements); Order No. 10,683 (assessing \$250 in part for failing to produce DC Medicaid statement).

¹¹ See *In re Marbec LLC, t/a Marbec Limo. Servs. LLC*, No. MP-06-052, Order No. 10,346 (Mar. 23, 2007) (revoking authority for failing to file acceptable verification and produce documents); *In re Gold Transp., Inc.*, No. MP-05-171, Order No. 9985 (Oct. 11, 2006) (same).

Accordingly, the associated late fees under Regulation No. 67-03(a)-(b) shall be waived.

THEREFORE, IT IS ORDERED:

1. That all late fees under Regulation No. 67-03(a)-(b) are hereby waived.

2. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$250 for knowingly and willfully violating Order No. 10,842.

3. That respondent is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of two hundred fifty dollars (\$250).

4. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 1327 is hereby revoked for respondent's willful failure to comply with Order No. 10,842.

5. That within 30 days from the date of this order respondent shall:

- a. remove from respondent's vehicle(s) the identification placed thereon pursuant to Commission Regulation No. 61;
- b. file a notarized affidavit with the Commission verifying compliance with the preceding requirement; and
- c. surrender Certificate No. 1327 to the Commission.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.
Executive Director